

REMARKS

This Amendment is filed in response to the Official Action dated June 29, 2006. In this Amendment, claims 1, 5 and 10 are amended and new claims 22-45 have been added. Following entry of this amendment, claims 1-45 shall be pending and claims 2-4, 6, 12-13, 15-19 and 21 remain withdrawn from consideration. Of the pending claims, claims 1, 10, 15 and 22 are independent.

In the Office Action, claim 1 is objected to because of an informality, and claims 1, 5, 7-11 and 20 have been rejected based on prior art grounds. For the reasons set forth below, it is submitted these prior art rejections should be withdrawn and the pending claims allowed.

I. CLAIM OBJECTION

The Examiner objected to claim 1 because of a typographical error. Claim 1 has been amended to fix the typographical error by including the word "to".

II. REJECTIONS UNDER 35 U.S.C. SECTION 103

Claims 1, 5, 7-11 and 20 are rejected under 35 U.S.C. Section 103(a) as being anticipated by U.S. Patent No. 4,353,436 to *Rice et al.* (*The Rice et al. Patent*) in view of U.S. Patent No. 2,187,390 to *Anderson et al.* (*The Anderson et al. Patent*). For the reasons set forth below, it is submitted that these prior art rejections should be withdrawn and the pending claims allowed.

With regard to all claims rejected under section 103(a), namely claims 1, 5, 7-11 and 20, the Examiner improperly combines *The Rice et al. Patent* and *The Anderson et al. Patent* since no specific motivation to combine the two references has been shown in the prior art. In other words, the Examiner has used improper hindsight in combining these two references. As stated in 2143.01 of the MPEP:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also

suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (Claims were directed to an apparatus for producing an aerated cementitious composition by drawing air into the cementitious composition by driving the output pump at a capacity greater than the feed rate. The prior art reference taught that the feed means can be run at a variable speed, however the court found that this does not require that the output pump be run at the claimed speed so that air is drawn into the mixing chamber and is entrained in the ingredients during operation. Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references)...

A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) (Court reversed obviousness rejection involving technologically simple concept because there was no finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated the skilled artisan to make the claimed invention); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) (The level of skill in the art cannot be relied upon to provide the suggestion to combine references.). [Emphasis added]

Even if it were somehow possible to physically combine the elements of the two references, the Examiner fails to show any specific evidence in the prior art of motivation to combine them. As discussed above, simply providing elements of a claim from different prior art references is NOT sufficient to establish a *prima facie* case of obviousness.

Combination of the cited references is also improper since these references are nonanalogous to each other and the present invention. While *The Rice et al. Patent* relates to a wheel chair lift, *The Anderson et al. Patent* is directed only to the technical

field of building elevators. In this respect, the combination of the two references to create an obviousness rejection is even more tenuous. Therefore, the obviousness rejection of claims 1, 5, 7-11 and 20 should be withdrawn for at least the previously discussed reasons.

While the Applicant's Attorney believes that the above stated reasons are sufficient for the withdrawal of the obviousness rejections against claims 1, 5, 7-11 and 20, the rejection of these claims will be further addressed below.

The presently claimed invention as set forth in claim 1 is directed to a lifting device in a recreational vehicle comprising a frame; an acme screw rotatably secured to said frame; a primary acme nut threaded onto said acme screw; and a bracket assemblage slidably disposed on said frame; said bracket assemblage sized and shaped so as to support and constrain rotation of said primary acme nut thereby requiring said bracket assemblage to slide when said acme screw is rotated; said bracket assemblage having a payload flange for supporting a bed; said bracket assemblage movable between a first user-accessible position and a second storage position.

Even if *The Rice et al. Patent* and *The Anderson et al. Patent* could somehow be properly combined, these references cannot be properly relied upon as rendering obvious the invention as recited in claim 1. For example, *The Rice et al. Patent* does not disclose a bracket assemblage having a payload flange for supporting a bed as claimed. Instead, *The Rice et al. Patent* teaches a mechanism only suitable for lifting a wheel chair. Nor does *The Rice et al. Patent* disclose said bracket assemblage movable between a first user-accessible position and a second storage position. Both the raised and lower positions of the wheel chair lift of *The Rice et al. Patent* are user accessible since the wheel chair user must be capable of moving into and out of the vehicle. These are important distinctions since it is of primary importance in a recreational vehicle to maximize the usage of space. The present invention allows the bed to be moved when not in use thus freeing the space for other uses whereas this is not the case with the wheel chair device of *The Rice et al. Patent*.

The Anderson et al. Patent does not make up for the deficiencies of *The Rice et al. Patent* insofar as it also fails to disclose a bracket assemblage having a payload flange for supporting a bed as claimed and said bracket assemblage moving between a first user-accessible position and a second storage position. As seen in Figure 1, *The Anderson et al. Patent* teaches a building elevator for transporting people in which all elevator positions are user accessible.

Hence, it is clear that neither *The Rice et al. Patent* alone nor *The Rice et al. Patent* in combination with *The Anderson et al. Patent* can be properly relied upon to reject claim 1. Accordingly it is submitted that the rejection of claim 1 based on *The Rice et al. Patent* and *The Anderson et al. Patent* should be withdrawn.

Turning to claims 5, 7-9 and 20, these claims depend from claim 1 and thus for at least the above reasons are also novel and unobvious over the cited prior art. However, these claims further limit the claimed invention and thus are separately patentable over the cited prior art. It should be further noted that claim 5 has been amended to include additional claim language in view of the amendments to claim 1.

Turning now to claim 10, this claim is directed towards a linear actuation system for use in a recreational vehicle comprising at least one acme screw rotatably fixed to a framework in said vehicle; a support system mounted on said framework and slidable along said at least one acme screw; an acme nut engaged with threads on said at least one acme screw, said at least one acme screw rotatably confined and supported on said support system; and, a payload coupled to said support system; said payload comprising a mattress; wherein said support system moves said payload between a first height accessible to a user and a second height inaccessible to a user.

The Rice et al. Patent and *The Anderson et al. Patent* cannot be properly relied upon as rendering obvious the invention as recited in claim 10. As previously discussed, the Examiner fails to show any specific evidence in the prior art of motivation to combine the two cited references. Simply citing elements of a claim from different prior art references is not sufficient to establish a *prima facie* case of obviousness. Further, *The Anderson et al. Patent* is selected from a nonanalogous field of technology,

namely the field of building elevators and therefore cannot be properly combined with *The Rice et al. Patent*. For at least these reasons, *The Rice et al. Patent* in view of *The Anderson et al. Patent* fails to render claim 10 obvious.

Furthermore, even if the acme nut structure of *The Anderson et al. Patent* could somehow be properly combined with *The Rice et al. Patent*, neither patent discloses a payload comprising a mattress wherein said support system moves said payload between a first height accessible to a user and a second height inaccessible to a user as presently recited in claim 10. This is a distinction that is very similar to the distinction discussed with regard to the different claim language recited in claim 1. However, it should be understood that the language of claims 1 and 10 differ from each other and therefore may provide differing claim scopes. Hence, for at least these reasons too, the rejection based on the combination of *The Rice et al. Patent* and *The Anderson et al. Patent* should be withdrawn.

Turning to claims 11 and 14, these claims depend from claim 10 and thus for at least the above reasons are also novel and unobvious over the cited prior art. However, these claims further limit the claimed invention and thus are separately patentable over the cited prior art.

III. NEWLY ADDED CLAIMS

The newly added claims 22-45 have been copied from some of the issued claims present in U.S. Patent number 6,983,979 to *Rasmussen*. It is believed that these new claims are fully supported by the present Application. Additionally, *The Rice et al. Patent* and *The Anderson et al. Patent* fail to render claims 22-45 obvious.

For example, claim 22 includes an upper bed positioned over a lower bed, the upper bed and the lower bed being movable vertically and at least substantially translationally between a first configuration where the upper bed and the lower bed are spaced apart in the cargo area to receive one or more persons to sleep thereon and a second configuration where the upper bed and the lower bed are stowed adjacent to a ceiling of the recreational vehicle; and a motor used to move the upper bed and the

lower bed between the first configuration and the second configuration. In contrast, *The Rice et al. Patent* is directed to a single platform wheelchair lift and *The Anderson et al. Patent* is directed to a safety mechanism for single platform elevators. Thus, it is believed that the newly presented claims, claims 22-45, are allowable over the cited prior art.

CONCLUSION

In view of the foregoing, it is submitted that pending claims 1, 5, 7-11 and 20 and 22-45 are now in condition for allowance.

If for any reason direct communication with Applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is cordially urged to call the undersigned attorney at the below listed telephone number.

Extra claims fees and the extension of time fee will be paid by credit card via the Electronic Filing System ("EFS"). The Commissioner is authorized to charge any additional fee which may be required in connection with this Amendment to Deposit Account No. 50-2809.

Respectfully submitted,

Dated: December 29, 2006

A handwritten signature in black ink, appearing to read 'Charles E. Fredericks', written over a horizontal line.

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